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OFFICE OF PETITIONS

In re Application of	:	
Briton, et al.	:	
Application No. 10/722,733	:	DECISION ON PETITION
Filed: November 25, 2003	:	UNDER 37 CFR 1.182
Attorney Docket No. 11767-055-999	:	

This is a decision on the petition under 37 CFR 1.182, filed June 30, 2008, requesting entry of an Application Data Sheet (ADS) to insert a reference to an earlier-filed application pursuant to the provisions of 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the ADS filed with the petition.

The petition is **DISMISSED**.

The above-noted abandoned application failed to make a specific reference to the prior-filed application; namely, that it is a continuation-in-part of 09/623,548, filed September 5, 2000, prior to abandonment. Petitioner now requests that the instant abandoned application be amended by inserting a reference to the earlier-filed application. The petition is accompanied by an ADS to include a reference to the prior-filed application.

35 U.S.C. § 120 permits entry of a subsequent amendment or ADS to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filing date for purposes other than prosecution. See Sampson v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976).

However, as the instant application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3) is required.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.


Further correspondence with respect to this matter should be addressed as follows:

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Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at (571) 272-3207.


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